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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 TODD SCHUENEMAN et al.,
12 Plaintiffs,
13 v.
14 ARENA PHARMACEUTICALS, INC. et
15 al.,
16 Defendants.

Case No.: 3:10-CV-1959-CAB-BLM

**ORDER PRELIMINARILY
APPROVING SETTLEMENT AND
PROVIDING FOR NOTICE OF
PROPOSED SETTLEMENT**

[Doc. No. 152]

17 AND RELATED CONSOLIDATED
18 ACTIONS
19

20 WHEREAS, the above captioned action¹ is pending before this Court (the “Action”);

21 WHEREAS, the Court has received and reviewed the Stipulation and Agreement of
22 Settlement dated November 3, 2017 (the “Stipulation”),² which sets forth the terms and
23 conditions for a proposed Settlement of the Action and for dismissal of the Action with
24 prejudice upon the terms and conditions set forth therein; and,
25

26
27 ¹ This is the lead case of a consolidated class action that includes Case Nos. 10cv1961, 10cv1977,
10cv1984, 10cv2026, 10cv2086, and 10cv2335.

28 ² For purposes of this Order, the Court adopts all defined terms as set forth in the Stipulation, and the
terms used herein shall have the same meaning as in the Stipulation.

1 WHEREAS, the Parties having made an application, pursuant to Federal Rule of
2 Civil Procedure 23(e), for an order preliminarily approving the settlement of this litigation,
3 in accordance with the Stipulation.

4 NOW, THEREFORE, IT IS HEREBY ORDERED:

5 1. The Court does hereby preliminarily approve the Stipulation and the
6 Settlement set forth therein, subject to further consideration at the Settlement Hearing
7 described below.

8 2. The Court finds that: (a) the Stipulation resulted from arm's-length
9 negotiations; and (b) the Stipulation is sufficiently fair, reasonable and adequate as to the
10 Settlement Class Members to warrant providing notice of the Settlement to Class Members
11 and holding a Settlement Hearing.

12 3. This Action is certified for settlement purposes only as a class action pursuant
13 to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of a class
14 (the "Settlement Class" or "Class") consisting of all Persons who purchased Arena
15 Pharmaceuticals, Inc. ("Arena") common stock between March 17, 2008 to January 27,
16 2011 ("Class Period"), inclusive, and were damaged thereby, excluding anyone named as
17 a defendant in the Action including the Company; members of the immediate family of the
18 Individual Defendants; Arena's directors and officers; any entity in which any Defendant
19 has a controlling interest; and the legal representatives, heirs, successor, and assigns of
20 such excluded parties. Also excluded are those Persons who timely and validly request
21 exclusion from the Class pursuant to the Notice.

22 4. The Court has determined preliminarily and for the purpose of settlement that:
23 (a) the Class is so numerous that joinder of all members is impracticable; (b) there are
24 questions of law and fact common to the Class that predominate over any individual
25 questions; (c) the claims or defenses of Lead Plaintiff are typical of the claims or defenses
26 of the Class; and (d) Lead Plaintiff will fairly and adequately protect the interests of the
27 Class, and appoints him class representative for the Settlement Class, and appoints Kaplan
28 Fox & Kilsheimer LLP Lead Counsel for the Settlement Class. The Court further

1 preliminarily finds that the questions of law or fact common to Settlement Class Members
2 (“Class Members”) predominate over any questions affecting individual members,
3 including but not limited to whether Defendants made false or misleading statements in
4 violation of the federal securities laws, whether any Defendant acted with scienter, and
5 whether the alleged false or misleading statements caused economic damage to the Class.
6 The Court also preliminarily finds that a class action is superior to other available methods
7 for the fair and efficient adjudication of this controversy.

8 5. On or before **December 29, 2018**, counsel for either the Settlement Class or
9 Defendants shall file a sworn affidavit confirming that the requirements of 28 U.S.C. §1715
10 have been satisfied, or in the alternative, a notice explaining why such requirements do not
11 apply to this settlement.

12 6. A hearing (the “Final Settlement Approval Hearing”) shall be held before this
13 Court on **April 12, 2018**, at **10:00 a.m.**, at the United States District Court for the Southern
14 District of California, Courtroom 4C, 221 West Broadway, San Diego, CA 92101, to
15 determine whether the proposed Settlement of the Action on the terms and conditions
16 provided for in the Stipulation is fair, reasonable, and adequate to the Class and should be
17 approved by the Court; whether a Judgment as provided in ¶ 1.12 of the Stipulation should
18 be entered; whether the proposed Plan of Allocation is fair, reasonable, and adequate and
19 should be approved; to determine the amount of fees and expenses that should be awarded
20 to Lead Counsel; and to determine the award to Lead Plaintiff. The Court may adjourn the
21 Final Settlement Approval Hearing without further notice to the Class Members.

22 7. The Court approves, as to form and content, the Notice of Pendency and
23 Proposed Settlement of Class Action (the “Notice”), the Proof of Claim and Release form
24 (the “Proof of Claim”), and Summary Notice annexed hereto as Exhibits A-1, A-2, and A-
25 3, respectively, and finds that the mailing and distribution of the Notice and publishing of
26 the Summary Notice substantially in the manner and form set forth in this Order meet the
27 requirements of Federal Rule of Civil Procedure 23, the Private Securities Litigation
28

1 Reform Act of 1995, and due process, and is the best notice practicable under the
2 circumstances and shall constitute due and sufficient notice to all Persons entitled thereto.

3 8. The firm of Garden City Group, LLC (“Claims Administrator”) is hereby
4 appointed to supervise and administer the notice procedure as well as the processing of
5 claims as more fully set forth below.

6 9. Not later than fourteen (14) days after entry of this Order (the “Notice Date”),
7 the Claims Administrator shall commence mailing the Notice and Proof of Claim,
8 substantially in the forms annexed hereto, by First-Class Mail to all Class Members who
9 can be identified with reasonable effort. The Claims Administrator and Lead Counsel shall
10 post the Notice and Proof of Claim on their respective websites.

11 10. Not later than fourteen (14) days after the Notice Date, the Claims
12 Administrator shall cause the Summary Notice to be published once in the national edition
13 of the Wall Street Journal and once over a national newswire service.

14 11. At least seven (7) days prior to the Final Settlement Approval Hearing, Lead
15 Counsel shall serve on Defendants’ counsel and file with the Court proof, by affidavit or
16 declaration, of such mailing and publishing.

17 12. Nominees who purchased Arena common stock for the beneficial ownership
18 of Class Members during the Class Period shall send the Notice and the Proof of Claim to
19 all such beneficial owners of Arena common stock within ten (10) days after receipt
20 thereof, or send a list of the names and addresses of such beneficial owners to the Claims
21 Administrator within ten (10) days of receipt thereof, in which event the Claims
22 Administrator shall promptly mail the Notice and Proof of Claim to such beneficial owners.
23 Lead Counsel shall, if requested, reimburse banks, brokerage houses or other nominees
24 solely for their reasonable out-of-pocket expenses incurred in providing notice to beneficial
25 owners who are Class Members out of the Settlement Fund, which expenses would not
26 have been incurred except for the sending of such notice, subject to further order of this
27 Court with respect to any dispute concerning such expenses.

1 13. All Class Members shall be bound by all determinations and judgments in the
2 Action concerning the Settlement, whether favorable or unfavorable to the Class.

3 14. Class Members who wish to participate in the Settlement shall complete and
4 submit Proof of Claim and Release forms in accordance with the instructions contained
5 therein. Unless the Court orders otherwise, all Proof of Claim and Release forms must be
6 postmarked or submitted electronically no later than one hundred twenty (120) days from
7 the Notice Date. Any Class Member who does not timely submit a Proof of Claim and
8 Release within the time provided shall be barred from sharing in the distribution of the
9 proceeds of the Settlement Fund, unless otherwise ordered by the Court. Notwithstanding
10 the foregoing, Lead Counsel may, in their discretion, recommend acceptance of late-
11 submitted claims for processing by the Claims Administrator so long as distribution of the
12 Net Settlement Fund to Authorized Claimants is not materially delayed thereby.

13 15. Any Class Members may enter appearances in the Action, at their own
14 expense, individually or through counsel of their own choice. If they do not enter an
15 appearance, they will be represented by Lead Counsel.

16 16. Any Person falling within the definition of the Class may, upon request, be
17 excluded or “opt out” from the Class. Any such Person must submit to the Claims
18 Administrator a request for exclusion (“Request for Exclusion”), postmarked no later than
19 no later than sixty days (60) days from the Notice Date. A Request for Exclusion must:
20 (a) state the name, address, and telephone number of the Person(s) requesting exclusion;
21 (b) identify the Person’s purchases (or acquisitions) and sales of Arena common stock
22 made during the Class Period, including the dates of purchase, acquisition or sale, prices
23 paid or received, and the number of shares of common stock purchased and/or sold, and
24 provide documentation reflecting such purchases and sales; (c) include the Person’s
25 signature; and (d) state that the Person wishes to be excluded from the Class. All Persons
26 who submit valid and timely Requests for Exclusion in the manner set forth in this
27 paragraph shall have no rights under the Stipulation, shall not share in the distribution of
28 the Net Settlement Fund, and shall not be bound by the Stipulation or any final judgment.

1 17. Lead Counsel shall cause to be provided to Defendants' counsel copies of all
2 Requests for Exclusion, and any written revocation of Requests for Exclusion shall be
3 promptly delivered to Arena's counsel by Lead Counsel.

4 18. Any Class Member may move and/or appear at the Final Settlement Approval
5 Hearing to show cause why the proposed Settlement of the Action should or should not be
6 approved as fair, reasonable, and adequate, why a judgment should or should not be entered
7 thereon, why the Plan of Allocation should or should not be approved, why attorneys' fees
8 and expenses should or should not be awarded to Lead Counsel, or why the expenses of
9 Lead Plaintiff should or should not be awarded. Any written objections must be delivered
10 by hand or sent by First-Class Mail postmarked, no later than twenty-one (21) days before
11 the Final Settlement Approval Hearing, to the Clerk of the Court, United States District
12 Court, Southern District of California, 333 West Broadway, Suite 420, San Diego, CA
13 92101, with copies to Lead Counsel set forth in the Notice. Any Class Member who does
14 not make his, her or its objection in writing in the manner provided or in person at the Final
15 Settlement Approval Hearing shall be deemed to have waived such objection and shall
16 forever be foreclosed from making any objection to the fairness or adequacy of the
17 proposed Settlement as set forth in the Stipulation, to the Plan of Allocation, or to the award
18 of attorneys' fees and expenses to Plaintiffs' Counsel or expenses of Lead Plaintiff, unless
19 otherwise ordered by the Court.

20 19. All funds held by the Escrow Agent shall be deemed and considered to be in
21 *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until
22 such time as such funds shall be distributed pursuant to the Stipulation and/or further
23 order(s) of the Court.

24 20. All opening briefs and supporting documents in support of the Settlement, the
25 Plan of Allocation, and any application by Lead Counsel for attorneys' fees and expenses
26 or by Lead Plaintiffs for their expenses shall be filed and served no later than thirty-five
27 days (35) days before the Final Settlement Approval Hearing. Replies to any objections
28

1 shall be filed and served by no later than seven days (7) days before the Final Settlement
2 Approval Hearing.

3 21. The Released Persons shall not have any responsibility for the Plan of
4 Allocation or any application for attorneys' fees or expenses submitted by Plaintiffs'
5 Counsel or Lead Plaintiff, and such matters will be considered separately from the fairness,
6 reasonableness, and adequacy of the Settlement.

7 22. At or after the Final Settlement Approval Hearing, the Court shall determine
8 whether the Plan of Allocation proposed by Lead Counsel, any application for attorneys'
9 fees or payment of expenses, and any award to Lead Plaintiff shall be approved.

10 23. All reasonable expenses incurred in identifying and notifying Class Members,
11 as well as administering the Settlement Fund, shall be paid as set forth in the Stipulation.
12 In the event the Settlement is not approved by the Court, or otherwise fails to become
13 effective, neither Lead Plaintiff nor Plaintiffs' Counsel shall have any obligation to repay
14 any amounts incurred and properly disbursed pursuant to ¶¶ 3.12 or 3.13 of the Stipulation.

15 24. Neither the Stipulation, nor any of its terms or provisions, nor any of the
16 negotiations or proceedings connected with it, shall be construed as an admission or
17 concession by Defendants of the truth of any of the allegations in the Action, or of any
18 liability, fault, or wrongdoing of any kind, nor construed as, or deemed to be evidence of,
19 or an admission or concession that Lead Plaintiff or any Class Members have suffered any
20 damages, harm, or loss.

21 25. The Court reserves the right to adjourn the date of the Final Settlement
22 Approval Hearing without further notice to the Class Members, and retains jurisdiction to
23 consider all further applications arising out of or connected with the proposed Settlement.
24 The Court may approve the Settlement, with such modifications as may be agreed to by
25 the Settling Parties, if appropriate, without further notice to the Class.

26 26. If the Stipulation and the Settlement set forth therein are not approved or
27 consummated or the Effective Date as provided in the Stipulation fails to occur for any
28 reason whatsoever, then this Order shall be rendered null and void to the extent provided

1 by and in accordance with the Stipulation, and in such event, all orders entered and releases
2 delivered in connection herewith shall be null and void to the extent provided by and in
3 accordance with the Stipulation and all proceedings had in connection therewith shall be
4 without prejudice to the rights of the Settling Parties status quo ante.

5 27. Pending final determination of whether the proposed Settlement should be
6 approved, neither the Lead Plaintiff nor any Class Member, directly or indirectly,
7 representatively, or in any other capacity, shall commence or prosecute against any of the
8 Defendants, any action or proceeding in any court or tribunal asserting any of the Released
9 Claims.

10 It is **SO ORDERED**.

11 Dated: November 30, 2017



Hon. Cathy Ann Bencivengo
United States District Judge

EXHIBIT A-1

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 TODD SCHUENEMAN, on behalf of
12 himself and all others similarly situated,

13 Plaintiff,

14 v.

15 ARENA PHARMACEUTICALS, INC.,
16 JACK LIEF, ROBERT E. HOFFMAN,
17 DOMINIC P. BEHAN, WILLIAM R.
ANDERSON, and CHRISTY

18 Defendants.
19

Case No. 3:10-cv-01959-CAB (BLM)

CONSOLIDATED CLASS ACTION

**NOTICE OF PENDENCY AND
PROPOSED SETTLEMENT OF
CLASS ACTION**

20 **NOTICE OF PENDENCY AND PROPOSED SETTLEMENT**
21 **OF CLASS ACTION**

22 **IF YOU PURCHASED THE COMMON STOCK OF ARENA**
23 **PHARMACEUTICALS, INC. (“ARENA” OR THE “COMPANY”) FROM**
24 **MARCH 17, 2008 THROUGH JANUARY 27, 2011, INCLUSIVE, YOUR**
25 **RIGHTS ARE AFFECTED AND YOU COULD RECEIVE A PAYMENT**
26 **FROM THE PROPOSED CLASS ACTION SETTLEMENT.**

*A Federal Court authorized this notice. This is not a solicitation from a lawyer.
This is not a notice that you have been sued.*

- 27 • This settlement (the “Settlement”) will provide \$12,025,000 in cash, plus
28 interest, and Arena common stock with a value of \$11,975,000 (“Settlement
Shares”) (Arena has the option to pay all or part of the Settlement Shares in
cash at the time Arena is to issue the Settlement Shares), for a total settlement
value of \$24 million, to pay claims from investors who (i) purchased Arena

Case No. 3:10-cv-01959-CAB (BLM)

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

1 common stock from March 17, 2008 through January 27, 2011, inclusive
2 (the "Class Period"), and were damaged thereby. Depending on the number
3 of eligible shares purchased by investors who elect to participate in the
4 Settlement, and when those shares were purchased and sold, the average
distribution is estimated to be \$0.13 per damaged share before deduction of
Court-approved fees and expenses described below. A further description
of the Plan of Allocation is on pages 18 to 25 below.¹

- 5 • The Settlement, subject to court approval, resolves class action claims
6 alleging that Arena and certain of its former officers and directors violated
7 the federal securities laws by making false or misleading statements and
8 failing to disclose material facts.
- 9 • For Lead Plaintiff, the principal reason for the Settlement is the benefit to be
10 provided to the Settlement Class now, while avoiding the costs and risks to
11 you and the Settlement Class from continuing with litigation. Lead Plaintiff
12 conducted a substantial investigation and discovery into the facts of the case
13 prior to reaching the Settlement, and considered the risks of proving liability
14 and damages, in addition to the further risk that a later judgment may not be
15 as large as the Settlement amount. For Defendants, the principal reason for
16 the Settlement is to eliminate the expense, risks, and uncertainty of continued
17 litigation.
- 18 • If the Settlement is approved by the Court, the Court-appointed lawyers for
19 Settlement Class Members, Kaplan Fox & Kilsheimer LLP will apply to the
20 Court for an award of attorneys' fees, not to exceed 30% percent of the
21 Settlement Fund, and for reimbursement of expenses not to exceed
22 \$350,000.00 incurred in investigating the facts, prosecuting the case, and
23 negotiating the Settlement. In addition, Lead Plaintiff may seek
24 reimbursement in an amount not to exceed \$25,000.00 for reasonable costs
25 and expenses in connection with his representation of the Class. These
26 payments, if approved, will come out of the \$24 million Settlement Fund,
and are estimated to be an average of \$0.04 per damaged share.
- 27 • Lead Plaintiff and the Defendants do not agree on the average amount of
28 damages per share that would be recoverable if the Lead Plaintiff were to
have prevailed on each claim alleged. The issues on which the parties
disagree include: (1) whether the Defendants violated the federal securities
laws; (2) whether the alleged federal securities laws' violations actually
caused any damage to investors; and (3) whether the allegedly false or
misleading statements and omissions caused the price of Arena's common
stock to be artificially inflated during the Class Period, and if so, the amount
by which Arena's common stock was allegedly artificially inflated (if at all)
during the Class Period.
- If you are a Settlement Class Member (as the term is defined below), your
legal rights are affected by the Settlement, regardless of whether you act or
do not act. Read this notice carefully.

¹ Capitalized terms that are not defined in this Notice are defined in the Stipulation and Agreement of Settlement dated November 3, 2017, which is available at www.ArenaPharmaceuticalsClassActionSettlement.com.

- 1 • If you have questions about the proposed Settlement, or would like further
2 information about the lawsuit, you may contact Lead Counsel at:

3 Jeffrey P. Campisi
4 KAPLAN FOX & KILSHEIMER LLP
5 850 Third Avenue; 14th Floor
6 New York, NY 10022
(212) 687-1980
(800) 290-1952
jcampisi@kaplanfox.com
www.kaplanfox.com

- 7 • You can also visit the following website, which has information specifically
8 about the Settlement, including the Stipulation and Agreement of Settlement,
9 forms, and key dates:
10 www.ArenaPharmaceuticalsClassActionSettlement.com. You can obtain
11 additional documents in person by visiting the office of the Clerk of the
Court for the United States District Court for the Southern District of
California. 333 West Broadway, Suite 420, San Diego, CA 92101, between
8:30 a.m. and 4:30 p.m., Monday through Friday, excluding Court holidays.

12 YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

13 **SUBMIT A CLAIM FORM:** The only way to possibly receive a payment from
14 the Settlement.

15 **Deadline:** _____, 2018.

16 **EXCLUDE YOURSELF:** You get no payment from the Settlement. This is the
17 only option that might allow you to bring an individual lawsuit against the
defendants asserting the legal claims being released in this case, if you have a valid
and timely claim.

18 **Deadline:** _____, 2018.

19 **OBJECT:** You may write to the Court if you do not like this Settlement, the Plan
20 of Allocation, the Fee and Expense Award requested by Lead Counsel, and/or the
award requested by Lead Plaintiff.

21 **Deadline:** _____, 2018.

22 **GO TO A HEARING:** You may ask to speak in Court about the fairness of the
23 Settlement.

24 **Hearing Date:** _____, 2018.

25 **DO NOTHING:** You get no payment and give up your rights relating to the claims
described in this Notice.

- 26 • These rights and options *and the deadlines to exercise them* are
27 explained in this Notice.
28 • The Court in charge of the lawsuit must decide whether to approve the
Settlement. If approved, payments will be made to claimants from the

Settlement Fund after the Effective Date, *i.e.*, after the Court approves the Settlement and enters judgment, and after all appeals and subsequent proceedings (if any) are resolved.

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3 25. Understanding Your Payment – The Plan of Allocation

4 **1. Why did I get this Notice package?**

5 You or someone in your family may have purchased Arena common stock
6 during the Class Period.

7 The Court caused this Notice to be sent to you because you have a right to know
8 about a proposed settlement of a class action lawsuit, a hearing to be held by
9 the Court to consider the fairness, reasonableness and adequacy of the
10 Settlement, and about all of your options, before the Court decides whether to
approve the Settlement. If the Court approves the Settlement, and after any
objections or appeals are resolved, a claims administrator appointed by the
Court will make the payments that the Settlement allows.

11 This Notice explains the lawsuit, the Settlement, your legal rights, what benefits
12 are available, who is eligible for them, and how to get them. It is not an
expression of any opinion by the Court with respect to the truth of the
allegations of the litigation or the merits of the claims or defenses asserted.

13 The Court in charge of the lawsuit is the United States District Court for the
14 Southern District of California, and the case is known as *Schueneman v. Arena*
15 *Pharmaceuticals, Inc., et al.*, Case No. 10-cv-1959-CAB-BLM. The Honorable
Cathy Ann Bencivengo is the Judge in charge of this class action (the “Court”).

16 **2. What is this lawsuit about?**

17
18 The lawsuit is a class action that alleges violations of Section 10(b) of the
19 Securities Exchange Act of 1934 (“Exchange Act”) (15 U.S.C. § 78j) and Rule
20 10b-5 promulgated thereunder (17 C.F.R. 240), and a violation of Section 20(a)
21 of the Exchange Act against the Individual Defendants. 15 U.S.C. § 78t(a)
22 against Arena Pharmaceuticals, Inc. (“Arena” or the “Company”); Jack Lief,
23 Arena’s former President, CEO and Chairman; Robert E. Hoffman, Arena’s
former CFO; Dominic P. Behan, Arena’s former Senior Vice President and
Chief Scientific Officer; William R. Shanahan, Jr., Arena’s former Senior Vice
President and Chief Medical Officer; and Christen Anderson, Arena’s former
Vice President of Clinical Development. Defendants Lief, Hoffman, Behan,
Shanahan and Anderson are referred to as the “Individual Defendants.”

24 Lead Plaintiff alleges that Defendants misled Arena investors about Arena’s
25 development of a new drug for weight loss, lorcaserin, by failing to disclose
that a mandatory long-term animal carcinogenicity study (the “Rat Study”)
suggested that lorcaserin causes cancer in rats.

26 This litigation began in September 2010, and on August 8, 2011, pursuant to
27 the Private Securities Litigation Reform Act of 1995 (“PSLRA”), the Court
28 consolidated seven class actions under the caption *Schueneman v. Arena*
Pharmaceuticals, Inc., et al. 10-cv-1959 (S.D. Cal.), appointed Carl Schwartz

1 as Lead Plaintiff (“Lead Plaintiff” or “Plaintiff”) for the proposed class, and
2 approved Lead Plaintiff’s choice of the law firm Kaplan Fox & Kilsheimer LLP
3 (“Kaplan Fox” or “Lead Counsel”) as Lead Counsel for Lead Plaintiff and the
4 proposed class.

5 On November 1, 2011, Plaintiff filed a Consolidated Amended Class Action
6 Complaint for Violations of the Federal Securities Laws (“FAC”). On
7 December 20, 2011, Defendants moved to dismiss the FAC and Plaintiff
8 opposed Defendants’ motion to dismiss. On March 28, 2013, the Court
9 dismissed, without prejudice, the FAC for failure to adequately allege the
10 scienter element of a Section 10(b) claim.

11 On May 13, 2013, Plaintiff filed the Second Consolidated Amended Class
12 Action Complaint (“Complaint”). On June 14, 2013, Defendants filed a motion
13 to dismiss the Complaint, arguing that Plaintiff failed to allege particularized
14 facts sufficient to show that any challenged statement was false or misleading
15 when it was made, that Arena’s forward-looking statements were protected by
16 the Safe Harbor provisions of the PSLRA, and that the Complaint failed to plead
17 specific facts establishing a strong inference of scienter. Plaintiff opposed
18 Defendants’ motion to dismiss, arguing that the Complaint adequately alleged
19 each element of the claims asserted. The Court held oral argument on
20 Defendants’ motion to dismiss the Complaint on October 25, 2013.

21 On November 4, 2013, the Court dismissed the Complaint, again finding that it
22 “fail[ed] to meet the Ninth Circuit’s pleading requirements for scienter” and
23 essentially holding that the case involved a scientific dispute between Arena
24 and the FDA regarding the safety of lorcasearin. The Court invited a proposed
25 Third Amended Complaint (“TAC”) to give Plaintiff the opportunity to plead
26 facts to “show this case to be about more than a difference of scientific opinion.”
27 Plaintiff moved for leave to amend and submitted the TAC. On March 20,
28 2014, the Court denied leave to amend, finding that amendment would be futile.
Final judgment was entered against Plaintiff on March 20, 2014.

Plaintiff appealed Court’s dismissal with prejudice of the Complaint to the
United States Court of Appeals for the Ninth Circuit (“Ninth Circuit”).

On October 26, 2016, the Ninth Circuit reversed the dismissal and remanded
the matter to the district court. *Schueneman v. Arena Pharms., Inc.*, 840 F.3d
698 (9th Cir. 2016).

After the Ninth Circuit reversed the dismissal of the Complaint, Defendants
filed a Petition for Panel Rehearing and a suggestion for Rehearing *En Banc*.
See Schueneman v. Arena Pharms, et al., No. 14-55633 (9th Cir.) (filed
Nov. 23, 2016). On January 10, 2017, the Ninth Circuit denied Defendants’
motion for rehearing and rehearing *en banc*. *Schueneman v. Arena Pharms, et*
al., No. 14-55633 (9th Cir.).

After the Action was remanded to the district court, on February 2, 2017,
Defendants filed a Renewed Motion to Dismiss the Complaint that asserted that
the Complaint failed to adequately allege falsity. On February 23, 2017,
Plaintiff filed an opposition to Defendants’ renewed motion to dismiss. On
April 28, 2017, the Court denied Defendants’ motion in its entirety.

1 On May 2, 2017, a Scheduling Order Regulating Discovery and Other Pre-Trial
2 Proceedings was entered. On May 12, 2017, Defendants answered the
Complaint, asserting 18 affirmative defenses.

3 Plaintiff served a comprehensive set of requests for production of documents
4 (“RFPs”), and two sets of interrogatories. On May 26, 2017, Defendants
5 responded to Plaintiff’s RFPs and on June 7 and 19, 2017, Defendants objected
to and answered certain of Plaintiff’s interrogatories.

6 On May 18, 2017, Defendants served their First Set of Requests for Production
of Documents and their First Set of Interrogatories on Plaintiff. On June 20,
7 2017, Plaintiff served Objections and Responses to Defendants’ First Set of
Requests for Production of Documents and First Set of Interrogatories. On July
8 14, 2017, Plaintiff produced documents in response to Defendants’ First Set of
Requests for Production of Documents.

9 Since May 2017, the parties have engaged in extensive discovery, including the
production or review of millions of pages of documents, including Arena’s New
10 Drug Application, Investigational New Drug Application, Arena’s
correspondence file with the U.S. Food and Drug Administration, minutes and
11 materials from the Company’s board of director’s meetings, as well as
Documents and Electronically Stored Information from 16 Arena custodians.
12 Plaintiff also served non-party subpoenas for documents on approximately 40
non-parties who collectively produced thousands of documents.

13 During the Action, the parties engaged the services of retired U.S. District
14 Judge Layn R. Phillips to assist them in mediation. The parties engaged in a
face-to-face mediation session on August 1, 2017. The parties were unable to
15 settle the case. Following further arms-length negotiations by telephone and in
writing with the assistance of Judge Phillips, Plaintiff and the Defendants
16 accepted the mediator’s proposal and agreed to a settlement (the “Settlement”)
of the Action.

17 The proposed Settlement would resolve all claims against Defendants.
18

19 **3. What is a class action?**

20 In a class action under the federal securities laws, the Lead Plaintiff sues on
21 behalf of numerous persons who have similar claims. The Lead Plaintiff acts
as the representative of the class of similarly situated persons. All persons with
22 similar claims constitute a Class, and each one is a Class Member. The Court
will resolve the claims of all Settlement Class Members, except for those who
23 properly exclude themselves from the Settlement Class.

24 **4. Why is there a Settlement?**

25 The proposed Settlement is the result of arm’s-length negotiations, including a
26 full day mediation on August 1, 2017 under the auspices of an experienced
mediator. The Settlement allows Plaintiff and the Settlement Class to avoid the
27 possibility that one or more of their claims would be rejected by the Court or
the jury, and also avoids the risks and costs of a trial and possible appeals.
28

1 Settlement Class Members who, in accordance with the Plan of Allocation, lost
2 money will get some compensation.

3 Lead Counsel has investigated and litigated the claims since September 2010.
4 At the time the Settlement was reached, Lead Counsel also had the benefit of a
5 substantial amount of fact discovery provided by Defendants, as well as several
6 non-parties. Lead Counsel also retained experienced financial experts and
7 experts in toxicology and preclinical or animal studies to assist them.

8 If Plaintiff proceeded to trial, he faced the risk that the Defendants would
9 prevail on the defenses they asserted and that Plaintiff would not win on any of
10 the claims. Even if Plaintiff had won at trial, he may not get any more money
11 than the \$24 million that Arena has agreed to pay in the Settlement, and the
12 Defendants would also be able to challenge the judgment through appeals.

13 As a result, and based upon their factual investigation, discovery conducted to
14 date, consultation with experts and evaluation of the claims of the Settlement
15 Class Members and defenses that Defendants asserted, Plaintiff and Lead
16 Counsel believe that the Settlement is fair, reasonable and adequate, and in the
17 best interests of the Class. The Settlement provides an immediate and certain
18 recovery without incurring any additional risk. By settling, Plaintiff and the
19 Settlement Class avoid the cost, uncertainty, and delay of continued litigation.

20 The Defendants believe the Settlement is fair because it allows the Defendants
21 to avoid the cost and distraction of continued litigation and the risk of losing at
22 trial or on appeal.

23 WHO IS INCLUDED IN THE SETTLEMENT

24 **5. How do I know if I am a Settlement Class Member?**

25 Everyone who fits the following description is a Settlement Class Member:

26 all Persons who purchased Arena common stock between March 17, 2008 to
27 January 27, 2011, inclusive, and were damaged thereby, excluding anyone
28 named as a defendant in the Action including the Company; members of the
immediate family of the Individual Defendants; Arena's directors and
officers; any entity in which any Defendant has a controlling interest; and the
legal representatives, heirs, successor, and assigns of such excluded parties.
Also excluded are those Persons who timely and validly request exclusion
from the Settlement Class pursuant to the Notice.

29 **6. Are there any exceptions to being included as a Settlement Class Member?**

30 Yes. As mentioned in the description above, you are not a Settlement Class
31 Member if any of the following applies to you:

- 32 ☐ You do not meet the definition of the Class above.

☐ You are a Defendant, or members of the immediate family of the Individual Defendants, one of Arena's directors and officers, an any entity in which any Defendant has a controlling interest, or are the legal representatives, heirs, successor, and assigns of such excluded parties.

☐ You timely and validly request exclusion from the Class pursuant to this Notice.

7. I'm still not sure whether I'm included.

If you are still not sure whether you are included, you can ask for free help. You can contact the Claims Administrator at (877) 981-9683 or you can fill out the claim form described in question 10, to see if you qualify. You can also contact Lead Counsel at the following address:

Jeffrey P. Campisi
KAPLAN FOX & KILSHEIMER LLP
850 Third Avenue; 14th Floor
New York, NY 10022
Phone: (212) 687-1980 or (800) 290-1952
Facsimile: (212) 687-7714
jcampisi@kaplanfox.com
www.kaplanfox.com

THE SETTLEMENT BENEFITS

8. What does the Settlement provide?

Arena caused \$12,025,000 to be paid into an escrow account that is earning interest for the benefit of the Settlement Class, and Arena will issue common stock with a value of \$11,075,000 (Arena has the option to pay all or part of the Settlement Shares in cash at the time Arena is to issue the Settlement Shares) upon Final approval of the Settlement, for a total value of \$24 million. The balance of this fund, after payment of Court-approved attorneys' fees and expenses, any award to Plaintiff, taxes, and the costs of claims administration, including the costs of printing and mailing this Notice and the cost of publishing newspaper notice, will be divided among all Settlement Class Members who submit valid claim forms (also called Authorized Claimants). The amount of money you will receive depends on a number of factors, including the total number of other Settlement Class Members who submit valid Proof of Claim and Release forms. This is discussed further in the next question below.

9. How much will my payment be?

The Settlement Amount of \$24 million, plus interest earned, minus the costs and expenses described in question 8 above, will be distributed on a pro rata basis to Authorized Claimants. If you are entitled to a payment, you will receive your pro rata share. The amount of your share of the Settlement Fund will depend on the number of valid and timely Proof of Claim and Release forms that Settlement Class Members send in, how many shares of Arena common

1 stock you purchased during the Class Period, and when you bought and sold
2 those shares. You should look at the Plan of Allocation section of this notice
3 that appears on pages 18 to 25 below for a description of the calculations to be
4 made in computing the claims of the Authorized Claimants, that is, those
5 investors who submit valid and timely Proof of Claim and Release forms
6 establishing that they are Settlement Class Members.

7 Depending on the number of Authorized Claimants, and the number of eligible
8 shares purchased by Authorized Claimants and when those shares were
9 purchased and sold, the average distribution is estimated to be \$0.13 per
10 damaged share before deduction of the costs and Court-approved payments
11 described under question 8 above.

12 Lead Counsel, without further notice to the Settlement Class, will apply to the
13 Court for payment of the Claims Administrator's fees and expenses incurred in
14 sending this Notice, administering the Settlement and distributing the
15 Settlement proceeds to the Authorized Claimants. These fees and expenses will
16 be paid from the Settlement Fund and will reduce the amount available for
17 distribution to Authorized Claimants. The same will be true of Court-awarded
18 attorneys' fees and expenses to Lead Counsel, and any Court award to Plaintiff.
19 Lead Counsel's request for attorneys' fees and costs, Lead Plaintiff's award
20 are discussed further at question 17 below.

21 **10. How can I get a payment?**

22 To qualify for payment, you must timely send in a Proof of Claim and Release
23 form that is received by the Claims Administrator. A Proof of Claim and
24 Release form is attached to this Notice. Read the instructions carefully, fill out
25 the form, include all the documents the form asks for, sign it, and mail it
26 postmarked no later than _____, 2018. Unless the Court orders otherwise,
27 if you do not timely submit a Proof of Claim and Release, you will be barred
28 from receiving any payments from the Net Settlement Fund, but will in all other
respects be bound by the Final Judgment in the case.

29 **11. When will I receive my payment?**

30 The Court will hold a hearing on _____, 2018, to decide
31 whether to approve the Settlement. If the Court approves the Settlement, there
32 may be appeals. If there are any appeals, it is uncertain when these appeals will
33 be resolved, and resolving them can take time, typically more than a year. The
34 Claims Administrator will also need time to process the submitted claims before
35 any distribution can be made to Authorized Claimants. The claims
36 administration process is complicated and will take many months, even when
37 there is no delay due to an appeal. Please be patient.

38 **12. What am I giving up to get a payment and stay in the Settlement Class?**

39 If you are a member of the Settlement Class, unless you exclude yourself, you
40 will give up and release any claims you might have against the Released

1 Persons relating to any of the claims brought by Plaintiff, as described more
2 fully below. It also means that all of the Court's orders will apply to you and
3 legally bind you. This will be true even if you do not submit or sign a Proof of
Claim and Release form, unless you exclude yourself from the Settlement
Class.

4 If the proposed Settlement is approved, the Court will enter a Final Judgment
5 and Order of Dismissal with Prejudice. The Judgment will dismiss the Released
6 Claims with prejudice as to all Released Persons. The Judgment will provide
7 that all Settlement Class Members shall be deemed to have released and forever
8 discharged all Released Claims against all Released Persons and that the
9 Released Persons shall be deemed to have released and discharged all
Settlement Class Members and counsel to the Plaintiff from all claims arising
out of the prosecution and settlement of the Action or the Released Claims.

10 "Released Persons" means each and all of the Defendants and each and all of
11 their Related Persons.

12 "Related Persons" means each of the Released Persons' and their legal
13 affiliates' past or present directors, officers, employees, partners, insurers, co-
14 insurers, reinsurers, principals, controlling shareholders, attorneys,
15 accountants, auditors, investment advisors, personal or legal representatives,
16 predecessors, successors, parents, subsidiaries, divisions, joint ventures,
assigns, spouses, heirs, estates, related or affiliated entities, any entity in which
a Released Person has a controlling interest, any members of an Individual
Defendant's immediate family, any trust of which an Individual Defendant is
the settlor or which is for the benefit of an Individual Defendant and/or any
member of an Individual Defendant's immediate family, and any entity in
which a Defendant and/or any member of an Individual Defendant's immediate
family has or have a controlling interest (directly or indirectly).

17 "Released Claims" means any and all claims, demands, rights, causes of action
18 or liabilities of every nature and description whatsoever (including, but not
19 limited to, any claims for damages, interest, attorneys' fees, expert or consulting
20 fees, and any other costs, expenses or liabilities whatsoever), whether based on
21 federal, state, local, foreign, statutory or common law or any other law, rule,
22 ordinance, administrative provision or regulation, including Unknown Claims
23 as defined in ¶ 1.30 of the Stipulation, whether class or individual in nature,
24 whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated,
25 at law or in equity, matured or unmatured, concealed or hidden, suspected or
26 unsuspected, which now exist or heretofore have existed, that were asserted or
could have been asserted by Lead Plaintiff or any Settlement Class Member
against the Released Persons based on, arising from or relating to both: (i) the
purchase, acquisition, holding, disposition, or sale of Arena common stock
during the Class Period; and (ii) the allegations, transactions, facts, matters,
events, disclosures, registration statements, public filings, acts, occurrences,
representations, statements, omissions or failures to act that occurred during the
Class Period and that were or could have been alleged by Lead Plaintiff in the
Action against the Released Persons based upon the facts alleged in the
Complaint. Released Claims does not include claims to enforce the Settlement.

27 "Unknown Claims" means collectively any Released Claims which Lead
28 Plaintiff or any Settlement Class Member do not know or suspect to exist in his,
her or its favor at the time of the release of the Released Persons which, if
known by him, her or it, might have affected his, her or its settlement with and

1 release of the Released Persons, or might have affected his, her or its decision
2 not to object to this Settlement or seek exclusion from the Settlement Class.
3 With respect to any and all Released Claims, the Settling Parties stipulate and
4 agree that, upon the Effective Date, Lead Plaintiff shall expressly waive and
each of the Class Members shall be deemed to have, and by operation of the
Judgment shall have, expressly waived the provisions, rights, and benefits of
California Civil Code §1542, which provides:

5 A general release does not extend to claims which the creditor
6 does not know or suspect to exist in his or her favor at the time
7 of executing the release, which if known by him or her must have
materially affected his or her settlement with the debtor.

8 Lead Plaintiff shall expressly waive and each of the Settlement Class Members
9 shall be deemed to have, and by operation of the Judgment shall have, expressly
10 waived any and all provisions, rights, and benefits conferred by any law of any
11 state or territory of the United States or any foreign country, or any principle of
12 common law, which is similar, comparable or equivalent in substance to
13 California Civil Code §1542. Lead Plaintiff and Settlement Class Members
14 may hereafter discover facts in addition to or different from those which he, she
15 or it now knows or believes to be true with respect to the subject matter of the
16 Released Claims, but upon the Effective Date, each Settlement Class Member,
17 and Lead Plaintiff expressly, shall be deemed to have, and by operation of the
18 Judgment shall have, fully, finally, and forever settled and released any and all
Released Claims, known or unknown, suspected or unsuspected, contingent or
non-contingent, whether or not concealed or hidden, which now exist, or
heretofore have existed, upon any theory of law or equity now existing or
coming into existence in the future, including, but not limited to, conduct which
is negligent, intentional, with or without malice, or a breach of any duty, law or
rule, without regard to the subsequent discovery or existence of such different
or additional facts. Lead Plaintiff acknowledges, and the Settlement Class
Members shall be deemed by operation of the Judgment to have acknowledged,
that the foregoing waiver was separately bargained for and a material element
of the Settlement of which this release is a part.

19 **EXCLUDING YOURSELF FROM THE SETTLEMENT**

20 If you do not want to be bound by the Judgment or recover money from the
21 Settlement Fund, and instead want to keep any claims you may have and any right
22 you may have to sue Defendants on your own about the legal issues in this case, then
you must take steps to get out. This is called excluding yourself from – or opting
out of – the Settlement Class.

23 Please note that there is a separate confidential supplemental agreement between
24 Plaintiff and Arena (the “Side Letter”). If, as specified in the Side Letter, the number
25 of shares of Arena common stock purchased during the Class Period by Settlement
26 Class Members, but who request exclusion from the Settlement Class, exceeds the
27 threshold(s) specified in the Side Letter, Arena will have the option to terminate this
28 Settlement in accordance with the procedures set forth in the Side Letter.

1 **13. How do I exclude myself from the Settlement?**

2 If you do not wish to be included in the Settlement Class and you do not wish
3 to participate in the proposed Settlement described in this Notice, you may
4 request to be excluded. To do so, you must submit a written request for
5 exclusion that must be received on or before _____, 2018 and must: (a) state
6 the name, address, and telephone number of the Person(s) requesting exclusion;
7 (b) identify the Person's purchases (or acquisitions) and sales of Arena common
8 stock made during the Class Period, including the dates of purchase, acquisition
9 or sale, prices paid or received, and the number of shares of common stock
10 purchased and/or sold, and provide documentation evidencing your purchases
11 of Arena common stock during this time period *such as* account statements,
12 brokerage confirmations, or other similar documentation; (c) include the
13 Person's signature; and (d) state that the Person wishes to be excluded from the
14 Settlement Class. No request will be considered valid unless all of the
15 information described above is included in the request. The request must be
16 addressed as follows:

17
18 Schueneman v. Arena Pharmaceuticals, Inc.
19 Request for Exclusion
20 c/o GCG
21 P.O. Box 10526
22 Dublin, OH 43017-0526
23

24 You cannot exclude yourself by phone or by e-mail.

25 **If you ask to be excluded from the Settlement Class, you will not get any
26 settlement payment.** If you exclude yourself, you will not be legally bound by
27 anything that happens in this lawsuit. You might be able to sue (or continue to
28 sue) Arena and the other Defendants in the future about the claims in this
lawsuit, but your claims may not be timely, valid, or you may not prevail on the
merits.

1 **14. If I don't exclude myself, can I sue Defendants for the same things later?**

2 No. Unless you exclude yourself, you give up any right to sue Defendants about
3 the claims that this Settlement resolves. If you have a pending lawsuit, speak
4 to your lawyer in that case immediately. You must exclude yourself from *this*
5 Settlement Class to continue or file any lawsuit alleging the same claims as are
6 alleged herein. Remember, the exclusion deadline is _____, **2018**. *See also*
7 *Question No. 12*: "What am I giving up to get a payment or stay in the
8 Settlement Class?"

1 **15. If I exclude myself, can I get money from this Settlement?**

2 **NO.** If you exclude yourself, you will not be entitled to receive any money
3 from the Settlement Fund. If you exclude yourself, do not send in a Proof of
4 Claim and Release form to ask for any money.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court appointed Kaplan Fox to represent Plaintiff and the Settlement Class Members. This law firm is called Lead Counsel. You will not be individually charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

You can send any questions to Lead Counsel (contact information is set forth on page 3) or to the Claims Administrator at:

Schueneman v. Arena Pharmaceuticals, Inc.
c/o GCG
P.O. Box 10526
Dublin, OH 43017-0526

www.ArenaPharmaceuticalsClassActionSettlement.com

17. How will the lawyers be paid?

Lead Counsel will apply to the Court for attorneys' fees not to exceed 30% of the Settlement Amount and for reimbursement of their out-of-pocket expenses not to exceed \$350,000.00. In addition, Plaintiff may seek reimbursement in an amount not to exceed \$25,000.00 for reasonable costs and expenses (including lost wages) in connection with his representation of the Settlement Class in accordance with 15 U.S.C. § 78u-4(a)(4). These payments, if approved, will reduce the amount to be divided among all Authorized Claimants by approximately \$0.04 per damaged share. *Such sums as may be approved by the Court will be paid from the Settlement Fund.* Settlement Class Members are not personally liable for any such fees or expenses.

The attorneys' fees and expenses requested will be the only payment to Lead Counsel for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis. To date, Lead Counsel have not been paid anything for their services for conducting this litigation on behalf of the Plaintiff and the Settlement Class nor for their substantial out-of-pocket expenses. The Court may, however, award less than this amount in its discretion.

THE COURT'S SETTLEMENT HEARING

18. When and where will the Court decide whether to approve the Settlement?

The Court will hold a hearing at _____ on _____, 2018 before the Honorable Cathy Ann Bencivengo, United States District Judge, at the United States District Court for the Southern District of California, United States Courthouse – Courtroom 4C, 221 West Broadway, San Diego, CA 92101 (the "Final Settlement Approval Hearing"). At this hearing the Court will

1 consider whether the Settlement, the Plan of Allocation, Lead Counsel's Fee
2 and Expense Application, and Plaintiff's application for an award are fair,
3 reasonable, and adequate. If there are objections, the Court will hear them. Any
4 Settlement Class Member who has not previously submitted a request for
5 exclusion from the Settlement Class may appear and be heard, to the extent
6 allowed by the Court, to state any objections.

7 The Court may reschedule the Settlement Hearing at any time, so if you plan to
8 attend or participate, you should check with the Clerk of the Court to know
9 whether there have been any changes of the place, date and time for the hearing.

10 **19. Do I have to come to the Settlement Hearing?**

11 No. Lead Counsel will answer questions the Judge may have. But you are
12 welcome to come at your own expense, and the Court will give you the
13 opportunity to be heard. If you send a written objection, the Court will consider
14 it. You don't have to come to Court to talk about it. You may also pay your
15 own lawyer to attend, but it is not necessary. Information about sending a
16 written objection is provided below.

17 If you or your representative intend to appear in person at the Final Settlement
18 Approval Hearing but have not submitted a written objection postmarked by
19 _____, 2018 (as described in Section 20 below), it is recommended that you
20 give advance notice to Lead Counsel and/or counsel for Defendants of your
21 intention to attend the hearing in order to object and the basis for your objection.
22 You may contact them at the addresses provided in Section 20 below.

23 **OBJECTING TO THE SETTLEMENT**

24 **20. How do I tell the Court that I do not like the Settlement?**

25 If you are a Settlement Class Member and do not exclude yourself, you can
26 object to the Settlement at the Final Settlement Approval Hearing if you do not
27 like any part of it, including the terms and conditions of the Settlement, the
28 Judgment to be entered approving the Settlement, the Plan of Allocation, the
attorneys' fees and expenses to be awarded to Lead Counsel, or the award to
Plaintiff. Please note, however, that the Court can only approve or deny the
Settlement; it cannot change the terms of the Settlement.

You can object in one of two ways: either (1) file a written objection with the
Court, or (2) attend the Final Settlement Approval Hearing to object in person
as described in Sections 18 and 19 above. You do not have to do both. If you
do not either file a written objection on time, or attend the Final Settlement
Approval Hearing to tell the Court about your objections, you **cannot** object to
the Settlement later. Any objections you might have will be waived.

All written objections must be postmarked no later than
_____, 2018, to the Court at the address listed
below. The written objection is a statement saying that you object to the
Settlement in *Schueneman v. Arena Pharmaceuticals, Inc., et al.*, 10-cv-1959-
CAB (BLM). The objection should include: (a) the full name, address and

1 telephone number of the objecting Settlement Class Member, (b) the number of
2 shares of Arena common stock the Settlement Class Member purchased from
3 March 18, 2008 through January 27, 2011; (c) documentation evidencing your
4 purchases of Arena common stock during this time period *such as* account
5 statements, brokerage confirmations, or other similar documentation; (d) the
6 reasons for the objection; (e) copies of any papers and briefs upon which your
7 objections are based; and (f) your signature, even if represented by counsel.
8 The objection should also advise the Court if the objecting Settlement Class
9 Member intends to appear at the Settlement Hearing, and if the objecting
10 Settlement Class Member intends to appear at the Settlement Hearing through
11 an attorney, the objection should also state the identity of all attorneys who will
12 appear at the Final Settlement Approval Hearing.

13 Please send your objections to the Settlement to:

14 Clerk of the Court
15 United States District Court
16 Southern District of California
17 333 West Broadway, Suite 420
18 San Diego, CA 92101

19 You may also file your objection in person at the United States District Court
20 for the Southern District of California at the address above.

21 You do not need to go to the Final Settlement Approval Hearing to have your
22 written objection considered by the Court. However, if you intend to appear at
23 the Final Settlement Approval Hearing through an attorney, you will be
24 responsible for paying for your attorney's costs and expenses.

21. What's the difference between objecting and excluding?

25 Objecting is simply telling the Court that you don't like something about the
26 Settlement, the Plan of Allocation, or the Fee and Expense Application, or
27 award to Plaintiff. Excluding yourself is telling the Court that you don't want
28 to be part of the Settlement Class. If you exclude yourself, you have no basis
to object because the Settlement no longer affects you.

If the Court approves the Settlement despite your objections, you are still bound
by the Settlement.

IF YOU DO NOTHING

22. What happens if I do nothing at all?

25 If you do nothing, you will not receive any money from this Settlement, **but**
26 **the judgment of the Court will still be binding upon you.** You **must file a**
27 **Proof of Claim and Release** form to be eligible to receive anything from the
28 Settlement. Also, unless you exclude yourself, you will be bound by the
judgment and will have released the Released Claims against the Released
Persons even if you do not file a Proof of Claim and Release. This means you

1 will not be able to start a lawsuit, continue with a lawsuit, or be part of any other
2 lawsuit against the Defendants relating to the Released Claims.

3 **OBTAINING MORE INFORMATION**

4 **23. Are there more details about the Settlement?**

5 This Notice summarizes the most important aspects of the proposed Settlement,
6 but it is not a complete description of the Settlement. You can get a copy of the
7 Stipulation and Agreement of Settlement by writing to Lead Counsel at the
addresses stated in item no. 7 above.

8 You can also call the Claims Administrator at **(877) 981-9683**, or contact it by
9 mail or through its website at the address listed below in item no. 24 to find
answers to common questions about the Settlement and obtain information
10 about the status of the Settlement approval process.

11 You can also review a copy of the entire Stipulation and Agreement of
12 Settlement and other documents filed in the Action during normal business
hours at the office of the Clerk of the Court, United States District Court,
13 Southern District of California, 333 West Broadway, Suite 420, San Diego, CA
92101 (refer to Case No. 10-cv-1959).

14 **PLEASE DO NOT CALL THE COURT OR THE
15 CLERK'S OFFICE ABOUT THIS SETTLEMENT.**

16 **SPECIAL NOTICE TO NOMINEES**

17 **24. Special Notice to Banks, Trustees, Brokerage Firms or Other Nominees**

18 Nominees who purchased the common stock of Arena for the beneficial interest
19 of other Persons during the Class Period shall, within ten (10) calendar days
20 after receipt of this Notice: (1) provide the Claims Administrator with the names
and addresses of such beneficial owners; or (2) forward a copy of this Notice
21 and the Proof of Claim and Release by First-Class Mail to each such beneficial
owner and, provide the Claim Administrator and Lead Counsel with written
22 confirmation that the Notice and Proof of Claim and Release have been so
forwarded. Upon submission of appropriate documentation to the Claims
23 Administrator, reimbursement of your reasonable costs and expenses of
complying with this provision will be paid from the Settlement Fund in
24 accordance with the provisions of the Stipulation, subject to further order of the
Court with respect to any dispute concerning such expenses. Additional copies
of this Notice may be obtained from the Claims Administrator by writing to:

25 Schueneman v. Arena Pharmaceuticals, Inc.
26 c/o GCG
P.O. Box 10526
27 Dublin, OH 43017-0526

28 www.ArenaPharmaceuticalsClassActionSettlement.com

1 **25. Understanding Your Payment - The Plan of Allocation**

2 Please note that the approval of the Settlement is separate from and not
3 conditioned on the Court's approval of the Plan of Allocation.

4 The Settlement Fund will be used to pay the Class Notice and Administration
5 Expenses, the Taxes and Tax Expenses, the Fee and Expense Award to Lead Counsel
6 (as approved by the Court), and any award to Plaintiff (as approved by the Court).
7 The balance (the "Net Settlement Fund") shall be distributed to Settlement Class
8 Members who submit valid and timely Proof of Claim and Release forms.

9 The following proposed Plan of Allocation reflects the contention of the
10 Settlement Class that because of Defendants' alleged misstatements, the price of
11 Arena common stock was inflated artificially during the Class Period, and that the
12 stock price decreases on September 14, 15 and 17, 2010, and January 28, 2011
13 resulted from disclosures of facts revealing Defendants' alleged prior misstatements
14 and omissions.

15 The Court has not made any finding that the Defendants are liable to the
16 Settlement Class or that the Settlement Class has suffered any compensable
17 damages, nor has the Court made any finding as to the measure of damages.

18 **PROPOSED PLAN OF ALLOCATION OF THE NET SETTLEMENT**
19 **FUND AMONG SETTLEMENT CLASS MEMBERS**

20 The objective of this Plan of Allocation is to equitably distribute the Net
21 Settlement Fund among Authorized Claimants based on their respective alleged
22 economic losses as a result of the alleged fraud, as opposed to losses caused by
23 market- or industry-wide factors, or Company-specific factors unrelated to the
24 alleged fraud. The Claims Administrator shall determine each Authorized
25 Claimant's share of the Net Settlement Fund based upon the recognized loss formula
26 (the "Recognized Loss") described below. A Recognized Loss will be calculated
27 for each share of Arena common stock purchased during the Class Period. The
28 calculation of Recognized Loss will depend upon several factors, including when
Arena common stock was purchased during the Class Period, and in what amounts,
and whether such shares were sold, and if sold, when they were sold, and for what
amounts. The Recognized Loss is not intended to estimate the amount a Settlement
Class Member might have been able to recover after a trial, nor to estimate the
amount that will be paid to Authorized Claimants pursuant to the Settlement. The
Recognized Loss is the basis upon which the Net Settlement Fund will be
proportionately allocated to the Authorized Claimants. The Claims Administrator
will use its best efforts to administer and distribute the Net Settlement Fund to the
extent that it is equitably and economically feasible.

The Plan of Allocation was created with the assistance of a consulting
damages expert, and reflects the assumption that the price of Arena common stock
was artificially inflated from March 17, 2008 through September 16, 2010, and from
December 22, 2010 through January 27, 2011. The calculations made pursuant to
the Plan of Allocation are generally based upon the measure of damages set forth in
Section 10(b) of the Exchange and Rule 10b-5 promulgated thereunder by the
Securities and Exchange Commission.

The estimated alleged artificial inflation in the price of Arena common stock
is based on certain misrepresentations alleged by Plaintiff and the stock price

1 reaction to the public announcements that allegedly corrected the misrepresentations
2 alleged by Plaintiff, net of market and industry effects, as well as Company-specific
disclosures unrelated to the alleged fraud.

3 Federal securities laws allow investors to recover for losses caused by
4 disclosures which corrected Defendants' previous alleged misleading statements or
omissions. Thus, in order to have been damaged by the alleged violations of the
5 federal securities laws, Arena common stock purchased must have been held during
a period of time in which its price declined due to the disclosure of information
6 which corrected an allegedly misleading statement or omission. Plaintiff and Lead
Counsel have determined that such price declines occurred on September 14, 15 and
17, 2010, and January 28, 2011 (the "Corrective Disclosures").

7
8 The "90-day look back" provision of the PSLRA is incorporated into the
calculation of the Recognized Loss for Arena common stock. The limitations on the
9 calculation of the Recognized Loss imposed by the PSLRA are applied such that
losses on Arena common stock purchased from March 17, 2008 through September
10 16, 2010, and held as of the close of the 90-day period subsequent to September 17,
2010 Corrective Disclosure, or purchased from December 22, 2010 through January
11 27, 2011 and held as of the close of the 90-day period subsequent to January 28,
2011 Corrective Disclosure (the "90-Day Lookback Periods") cannot exceed the
difference between the purchase price paid for such stock and the average price of
12 Arena common stock during the applicable 90-Day Lookback Period. The
Recognized Loss on Arena common stock purchased from March 17, 2008 through
13 September 16, 2010 or from December 22, 2010 through January 27, 2011, and sold
during the applicable 90-Day Lookback Period cannot exceed the difference
14 between the purchase price paid for such stock and the rolling average price of Arena
common stock during the portion of the applicable 90-Day Lookback Period elapsed
15 as of the date of sale.

16 **Calculation of Recognized Loss Per Share of Arena Common Stock**

17 For each share of Arena common stock purchased during the Class Period, the
Recognized Loss per share shall be calculated as described in what follows. In the
18 calculations below, all purchase and sale prices shall exclude any fees, taxes and
commissions. If a Recognized Loss amount is calculated to be a negative number,
19 that Recognized Loss shall be set to zero.

20 **1. For shares of Arena common stock purchased from March 17, 2008 through September 16, 2010:**

21 A. For shares sold from March 17, 2008 through September 13, 2010, the
22 Recognized Loss shall be zero.

23 B. For shares sold from September 14 through 16, 2010, the Recognized Loss
shall be that number of shares multiplied by the lesser of:

- 24 (1) the applicable purchase date artificial inflation per share figure less the
25 applicable sales date artificial inflation per share figure, as found in
Table A; or

(2) the Out of Pocket Loss.²

C. For shares sold from September 17, 2010 through December 15, 2010³, the Recognized Loss shall be that number of shares multiplied by the lesser of:

- (1) the applicable purchase date artificial inflation per share figure, as found in Table A; or
- (2) the purchase price of each such share (excluding all fees, taxes and commissions) less the average closing price from September 17, 2010 and the date of sale, as found in Table B; or
- (3) the Out of Pocket Loss.

D. For shares held at the end of trading on December 15, 2010, the Recognized Loss shall be that number of shares multiplied by the lesser of:

- (1) the applicable purchase date artificial inflation per share figure, as found in Table A;
- (2) the difference between the purchase/acquisition price of each such share excluding all fees, taxes and commissions) and \$1.56⁴; or
- (3) Out of Pocket Loss.

2. **For shares of common stock purchased from September 17, 2010 through December 21, 2010.**

Purchasers of Arena common stock from September 17, 2010 through December 21, 2010 purchased Arena common stock during a period when

² “Out of Pocket Loss” means the purchase/acquisition price of each such share (excluding all fees, taxes and commissions) less the sale/disposition price of each such share (excluding all fees, taxes and commissions).

³ Section 21(D)(e)(2) of the PSLRA provides that “in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, if the plaintiff sells or repurchases the subject security prior to the expiration of the 90-day period described in paragraph (1), the plaintiff’s damages shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the security and the mean trading price of the security during the period beginning immediately after dissemination of information correcting the misstatement or omission and ending on the date on which the plaintiff sells or repurchases the security.”

⁴ Section 21(D)(e)(1) of the PSLRA provides that “in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated.” The mean (average) closing price of Arena common stock during the 90-day period beginning on September 17, 2010 and ending on December 15, 2010 was \$1.56 per share. The mean (average) closing price of Arena common stock during the 90-day period beginning on January 28, 2011 and ending on April 27, 2011 was \$1.49 per share.

Arena common stock was not alleged to have been inflated as a result of any of Defendants' alleged misrepresentations. As a result, for shares purchased from September 17 through December 21, 2010, the Recognized Loss shall be zero.

3. For shares of common stock purchased from December 22, 2010 through January 27, 2011.

A. For shares sold from December 22, 2010 through January 27, 2011, the Recognized Loss shall be zero.

B. For shares sold from January 28, 2011 through April 27, 2011³, the Recognized Loss shall be that number of shares multiplied by the lesser of:

- (1) \$0.32 per share;
- (2) the purchase/acquisition price of each such share (excluding all fees, taxes and commissions) less the average closing price from January 28, 2011 and the date of sale, as found in Table B; or
- (3) the Out of Pocket Loss.

C. For shares held as of the close of trading on April 27, 2011, the Recognized Loss shall be that number of shares multiplied by the lesser of:

- (1) \$0.32 per share;
- (2) the difference between purchase/acquisition price of each such share (excluding all fees, taxes and commissions) and \$1.49⁴; or
- (3) the Out of Pocket Loss.

Table A

<u>Purchase or Sale Date Range</u>	<u>Artificial Inflation Per Share</u>
03/17/2008 - 09/13/2010	\$4.85
09/14/2010	\$2.15
09/15/2010 – 09/16/2010	\$1.74

Table B

	<u>Average Closing Price Between 9/17/2010 and Date</u>		<u>Average Closing Price Between 9/17/2010 and Date</u>		<u>Average Closing Price Between 01/28/2011 and Date</u>		<u>Average Closing Price Between 01/28/2011 and Date</u>	
	<u>Date</u>	<u>Date</u>	<u>Date</u>	<u>Date</u>	<u>Date</u>	<u>Date</u>	<u>Date</u>	<u>Date</u>
09/17/2010	\$1.99	11/02/2010	\$1.66	01/28/2011	\$1.63	03/15/2011	\$1.61	
09/20/2010	\$1.93	11/03/2010	\$1.65	01/31/2011	\$1.61	03/16/2011	\$1.60	
09/21/2010	\$1.88	11/04/2010	\$1.65	02/01/2011	\$1.63	03/17/2011	\$1.60	
09/22/2010	\$1.81	11/05/2010	\$1.65	02/02/2011	\$1.63	03/18/2011	\$1.59	
09/23/2010	\$1.79	11/08/2010	\$1.64	02/03/2011	\$1.63	03/21/2011	\$1.59	
09/24/2010	\$1.76	11/09/2010	\$1.64	02/04/2011	\$1.63	03/22/2011	\$1.59	
09/27/2010	\$1.73	11/10/2010	\$1.63	02/07/2011	\$1.64	03/23/2011	\$1.58	

1	09/28/2010	\$1.71	11/11/2010	\$1.63	02/08/2011	\$1.64	03/24/2011	\$1.58
	09/29/2010	\$1.70	11/12/2010	\$1.63	02/09/2011	\$1.65	03/25/2011	\$1.57
2	09/30/2010	\$1.69	11/15/2010	\$1.62	02/10/2011	\$1.65	03/28/2011	\$1.57
	10/01/2010	\$1.67	11/16/2010	\$1.62	02/11/2011	\$1.65	03/29/2011	\$1.57
3	10/04/2010	\$1.67	11/17/2010	\$1.61	02/14/2011	\$1.65	03/30/2011	\$1.57
	10/05/2010	\$1.68	11/18/2010	\$1.60	02/15/2011	\$1.65	03/31/2011	\$1.56
4	10/06/2010	\$1.68	11/19/2010	\$1.60	02/16/2011	\$1.65	04/01/2011	\$1.56
	10/07/2010	\$1.67	11/22/2010	\$1.59	02/17/2011	\$1.65	04/04/2011	\$1.55
5	10/08/2010	\$1.67	11/23/2010	\$1.59	02/18/2011	\$1.65	04/05/2011	\$1.55
	10/11/2010	\$1.68	11/24/2010	\$1.58	02/22/2011	\$1.65	04/06/2011	\$1.54
6	10/12/2010	\$1.69	11/26/2010	\$1.58	02/23/2011	\$1.64	04/07/2011	\$1.54
	10/13/2010	\$1.69	11/29/2010	\$1.58	02/24/2011	\$1.64	04/08/2011	\$1.54
7	10/14/2010	\$1.70	11/30/2010	\$1.57	02/25/2011	\$1.64	04/11/2011	\$1.53
	10/15/2010	\$1.70	12/01/2010	\$1.57	02/28/2011	\$1.64	04/12/2011	\$1.53
8	10/18/2010	\$1.70	12/02/2010	\$1.57	03/01/2011	\$1.64	04/13/2011	\$1.52
	10/19/2010	\$1.69	12/03/2010	\$1.56	03/02/2011	\$1.64	04/14/2011	\$1.52
9	10/20/2010	\$1.69	12/06/2010	\$1.56	03/03/2011	\$1.64	04/15/2011	\$1.52
	10/21/2010	\$1.68	12/07/2010	\$1.56	03/04/2011	\$1.63	04/18/2011	\$1.51
10	10/22/2010	\$1.68	12/08/2010	\$1.56	03/07/2011	\$1.63	04/19/2011	\$1.51
	10/25/2010	\$1.68	12/09/2010	\$1.56	03/08/2011	\$1.62	04/20/2011	\$1.50
11	10/26/2010	\$1.67	12/10/2010	\$1.56	03/09/2011	\$1.62	04/21/2011	\$1.50
	10/27/2010	\$1.67	12/13/2010	\$1.56	03/10/2011	\$1.62	04/25/2011	\$1.49
12	10/28/2010	\$1.67	12/14/2010	\$1.56	03/11/2011	\$1.61	04/26/2011	\$1.49
	10/29/2010	\$1.66	12/15/2010	\$1.56	03/14/2011	\$1.61	04/27/2011	\$1.49
13	11/01/2010	\$1.66						

INSTRUCTIONS APPLICABLE TO ALL CLAIMANTS

The payment you receive will reflect your proportionate share of the Net Settlement Fund. Such payment will depend on the number of eligible common shares of Arena that participate in the Settlement, and when those shares were purchased and sold. The number of claimants who send in claims varies widely from case to case.

The date of purchase or sale is the “contract” or “trade” date as distinguished from the “settlement” date.

Acquisition by Gift, Inheritance, or Operation of Law: If a Settlement Class Member acquired Arena common stock during the Class Period by way of gift, inheritance or operation of law, such a claim will be computed by using the date and price of the original purchase and not the date and price of transfer. To the extent that Arena common stock was originally purchased prior to commencement of the Class Period, the Recognized Loss for that acquisition shall be deemed to be zero.

Notwithstanding any of the above, receipt of Arena common stock during the Class Period in exchange for securities of any other corporation or entity shall not be deemed a purchase or sale of Arena common stock.

For Class Members who made multiple purchases or sales during the Class Period, the First-In, First-Out (“FIFO”) method will be applied to such holdings, purchases, and sales for purposes of calculating a claim. Under the FIFO method, sales of Arena common stock during the Class Period will be matched, in chronological order, first against shares of common stock held at the beginning of the Class Period. The remaining sales of common stock during the Class Period will

1 then be matched, in chronological order, against common stock purchased during
2 the Class Period.

3 The date of covering a “short sale” is deemed to be the date of purchase of
4 shares. The date of a “short sale” is deemed to be the date of sale of shares. In
5 accordance with the Plan of Allocation, however, the Recognized Loss on “short
6 sales” is zero. In the event that a claimant has an opening short position in Arena
7 common stock, the earliest Class Period purchases shall be matched against such
8 opening short position and not be entitled to a recovery until that short position is
9 fully covered.

10 With respect to Arena common stock purchased or sold through the exercise
11 of an option, the purchase/sale date of the stock shall be the exercise date of the
12 option and the purchase/sale price of the stock shall be the closing price of Arena
13 common stock on the date of exercise of the option. Any Recognized Loss arising
14 from purchases of Arena common stock acquired during the Class Period through
15 the exercise of an option on Arena common stock⁵ shall be computed as provided
16 for other purchases of Arena common stock in the Plan of Allocation.

17 A Claimant’s “Recognized Claim” under the Plan of Allocation shall be the
18 sum of his, her or its Recognized Loss amounts.

19 The Net Settlement Fund will be distributed to Authorized Claimants on a pro
20 rata basis based on the relative size of their respective Recognized Claim.
21 Specifically, a “Distribution Amount” will be calculated for each Authorized
22 Claimant, which shall be the Authorized Claimant’s Recognized Claim divided by
23 the total Recognized Claims of all Authorized Claimants, multiplied by the total
24 amount in the Net Settlement Fund. If any Authorized Claimant’s Distribution
25 Amount calculates to less than \$10.00, it will not be included in the calculation and
26 no distribution will be made to such Authorized Claimant.

27 To the extent a Claimant had a market gain with respect to his, her, or its
28 overall transactions in Arena common stock during the Class Period, the value of the
Claimant’s Recognized Claim shall be zero. Such Claimants shall in any event be
bound by the Settlement. To the extent that a Claimant suffered an overall market
loss with respect to his, her, or its overall transactions in Arena common stock during
the Class Period, but that market loss was less than the total Recognized Claim
calculated above, then the Claimant’s Recognized Claim shall be limited to the
amount of the actual market loss.

For purposes of determining whether a Claimant had a market gain with
respect to his, her, or its overall transactions in Arena common stock during the Class
Period or suffered a market loss, the Claims Administrator shall determine the
difference between (i) the Total Purchase Amount⁶ and (ii) the sum of the Total Sales

⁵ Including (1) purchases of Arena common stock as the result of the exercise of a
call option, and (2) purchases of Arena common stock by the seller of a put option
as a result of the buyer of such put option exercising that put option.

⁶ The “Total Purchase Amount” is the total amount the Claimant paid (excluding
commissions and other charges) for all Arena common stock purchased during the
Class Period.

1 Proceeds⁷ and Holding Value.⁸ This difference shall be deemed a Claimant's market
2 stock during the Class Period.

3 Please contact the Claims Administrator or Lead Counsel if you disagree with
4 any determinations made by the Claims Administrator regarding your Proof of
5 Claim. The Court has reserved jurisdiction to allow, disallow, or adjust the claim of
6 any Class Member on equitable grounds.

7 Payment pursuant to the Plan of Allocation set forth above shall be conclusive
8 against all Authorized Claimants. Defendants, their respective counsel, and all other
9 Released Persons will have no responsibility or liability whatsoever for the
10 investment of the Settlement Fund, the distribution of the Net Settlement Fund, the
11 Plan of Allocation or the payment of any claim. No Person shall have any claim
12 against Plaintiff, Plaintiffs' Counsel, any claims administrator, or other Person
13 designated by Plaintiff's counsel, or Defendants or Defendants' counsel based on
14 distributions made substantially in accordance with the Stipulation and the
15 Settlement contained therein, the Plan of Allocation, or further orders of the Court.

16 All Settlement Class Members who fail to complete and file a valid and timely
17 Proof of Claim and Release shall be barred from participating in distributions from
18 the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall
19 be bound by all of the terms of the Stipulation, including the terms of any judgment
20 entered and the releases given.

21 Distributions will be made to Authorized Claimants after all claims have been
22 processed and after the Court has finally approved the Settlement. If any funds
23 remain in the Net Settlement Fund by reason of uncashed distribution checks or
24 otherwise, then, after the Claims Administrator has made reasonable and diligent
25 efforts to have Class members who are entitled to participate in the distribution of
26 the Net Settlement Fund cash their distributions, any balance remaining in the Net
27 Settlement Fund after a reasonable time after the initial distribution, will be used in
28 the following fashion: (a) first, to pay any amounts mistakenly omitted from the
initial disbursement; (b) second, to pay any additional settlement administration fees,
costs, and expenses, including those of Lead Counsel as may be approved by the
Court; and (c) finally, to make a second distribution to claimants who cashed their
checks from the initial distribution and who would receive at least \$10.00, after
payment of the estimated costs, expenses, or fees to be incurred in administering the
Net Settlement Fund and in making this second distribution, if such second
distribution is economically feasible. These redistributions shall be repeated, if

⁷ The Claims Administrator shall match any sales of Arena common stock during
the Settlement Class Period, first against the Claimant's opening position in Arena
common stock (the proceeds of those sales will not be considered for purposes of
calculating market gains or losses). The total amount received (excluding
commissions and other charges) for the remaining sales of Arena common stock sold
during the Class Period shall be the "Total Sales Proceeds."

⁸ The Claims Administrator shall ascribe a Holding Value of \$1.56 per share for
Arena common stock purchased between March 17, 2008 and September 16, 2010
and still held as of the close of trading on December 15, 2010, and shall ascribe a
Holding Value of \$1.49 per share for Arena common stock purchased between
December 22, 2010 and January 27, 2011 and still held as of the close of trading on
April 27, 2011.

1 economically feasible, until the balance remaining in the Net Settlement Fund is *de*
2 *minimis* and such remaining balance will then be donated to the Legal Aid Society
3 of San Diego, Inc.

4 **DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE**

5 DATED: _____, 2017

6 BY ORDER OF THE COURT
7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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EXHIBIT A-2

Must be
Postmarked
No Later Than
_____ 2018

Schueneman v. Arena Pharmaceuticals, Inc.
c/o GCG
P.O. Box 10526
Dublin, OH 43017-0526

SAP



Toll-Free: (877) 981-9683

Settlement Website: www.ArenaPharmaceuticalsClassActionSettlement.com

Claim Number:

Control Number:

PROOF OF CLAIM AND RELEASE

IF YOU PURCHASED COMMON STOCK OF ARENA PHARMACEUTICALS, INC. ("ARENA") FROM MARCH 17, 2008 THROUGH JANUARY 27, 2011, INCLUSIVE, AND SUFFERED LOSSES AS A RESULT OF SUCH PURCHASE, YOU ARE A "SETTLEMENT CLASS MEMBER" AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT PROCEEDS.

IF YOU ARE A SETTLEMENT CLASS MEMBER, YOU MUST COMPLETE AND SUBMIT THIS FORM IN ORDER TO BE ELIGIBLE FOR ANY SETTLEMENT BENEFITS.

TO BE ELIGIBLE TO RECEIVE A DISTRIBUTION IN THE SETTLEMENT, YOU MUST COMPLETE AND SIGN THIS PROOF OF CLAIM AND RELEASE ("PROOF OF CLAIM") AND MAIL IT BY FIRST CLASS MAIL, POSTAGE PREPAID, **POSTMARKED NO LATER THAN _____, 2018**, TO THE CLAIMS ADMINISTRATOR, AT THE ADDRESS SET FORTH ABOVE.

YOUR FAILURE TO TIMELY SUBMIT A COMPLETED PROOF OF CLAIM WILL SUBJECT YOUR CLAIM TO REJECTION AND PRECLUDE YOUR RECEIVING ANY MONEY IN CONNECTION WITH THE SETTLEMENT OF THIS ACTION. DO NOT MAIL OR DELIVER YOUR CLAIM TO THE COURT OR TO ANY OF THE PARTIES OR THEIR COUNSEL AS ANY SUCH CLAIM WILL BE DEEMED NOT TO HAVE BEEN SUBMITTED. SUBMIT YOUR CLAIM ONLY TO THE CLAIMS ADMINISTRATOR.

IF YOU ARE NOT A SETTLEMENT CLASS MEMBER, OR IF YOU FILED A REQUEST FOR EXCLUSION FROM THE SETTLEMENT CLASS, DO NOT SUBMIT A PROOF OF CLAIM. YOU MAY NOT, DIRECTLY OR INDIRECTLY, PARTICIPATE IN THE SETTLEMENT IF YOU ARE NOT A SETTLEMENT CLASS MEMBER OR IF YOU SUBMIT A VALID AND TIMELY REQUEST FOR EXCLUSION.

Submission of this Form does not guarantee that you will share in the proceeds of the Settlement. Distribution of the Net Settlement Fund will be governed by the Plan of Allocation set forth in the Notice, if it is approved by the Court, or by such other plan of allocation as the Court approves.

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Important - This form should be completed IN CAPITAL LETTERS using BLACK or DARK BLUE ballpoint/fountain pen. Characters and marks used should be similar in the style to the following:

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z 1 2 3 4 5 6 7 0



CLAIMANT'S STATEMENT

1. I (we) purchased or otherwise purchased shares of Arena common stock between March 17, 2008 and January 27, 2011, inclusive, and claim to have suffered losses as a result of such purchase.
2. By submitting this Proof of Claim, I (we) state that I (we) believe in good faith that I am (we are) a Settlement Class Member as defined above and in the Notice of Pendency and Proposed Settlement of Class Action (the "Notice"), or am (are) acting for such person(s); that I am (we are) not a Defendant in the Action or anyone excluded from the Settlement Class; that I (we) have read and understand the Notice; that I (we) believe that I am (we are) entitled to receive a share of the Net Settlement Fund, as defined in the Notice; that I (we) elect to participate in the proposed Settlement described in the Notice; and that I (we) have not filed a request for exclusion. (Note: If you are acting in a representative capacity on behalf of a Settlement Class Member [e.g., as an executor, administrator, trustee, or other representative], you must submit evidence of your current authority to act on behalf of that Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.)
3. I (we) consent to the jurisdiction of the Court with respect to all questions concerning the validity of this Proof of Claim. I (we) understand and agree that my (our) claim may be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to my (our) status as a Settlement Class Member(s) and the validity and amount of my (our) claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Proof of Claim.
4. I (we) have set forth where requested below all relevant information with respect to each purchase of Arena common stock during the Class Period, and each sale, if any, of such securities. I (we) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so.
5. I (we) have enclosed photocopies of the stockbroker's confirmation slips, stockbroker's statements, or other documents evidencing each purchase, sale or retention of Arena common stock listed below in support of my (our) claim. (Note: IF ANY SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN A COPY OR EQUIVALENT DOCUMENTS FROM YOUR BROKER BECAUSE THESE DOCUMENTS ARE NECESSARY TO PROVE AND PROCESS YOUR CLAIM.)
6. I (we) understand that the information contained in this Proof of Claim is subject to such verification as the Claims Administrator may request or as the Court may direct, and I (we) agree to cooperate in any such verification. (Note: The information requested herein is designed to provide the minimum amount of information necessary to process most simple claims. The Claims Administrator may request additional information as required to efficiently and reliably calculate your recognized claim. In some cases, the Claims Administrator may condition acceptance of the claim based upon the production of additional information.
7. Upon the occurrence of the Court's approval of the Settlement, as detailed in the Notice, I (we) agree and acknowledge that my (our) signature(s) hereto shall effect and constitute a full and complete release, remise and discharge by me (us) and my (our) heirs, joint tenants, tenants in common, beneficiaries, executors, administrators, predecessors, successors, attorneys, insurers and assigns (or, if I am (we are) submitting this Proof of Claim on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by its, his, her or their heirs, executors, administrators, predecessors, successors, and assigns) of each of the "Released Parties" of all "Release of Claims," as defined in the Notice.
8. NOTICE REGARDING ELECTRONIC FILES: Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. All Claimants MUST submit a manually signed paper Proof of Claim form listing all their transactions whether or not they also submit electronic copies. If you wish to file your claim electronically, you must contact the Claims Administrator at eClaim@choosegcg.com or visit their website at www.ArenaPharmaceuticalsClassActionSettlement.com to obtain the required file layout. No electronic files will be considered to have been properly submitted unless the Claims Administrator issues to the Claimant a written acknowledgment of receipt and acceptance of electronically submitted data.

PART I - CLAIMANT INFORMATION

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PART I - CLAIMANT INFORMATION CONTINUED

Section C. Retirement accounts. *Please indicate the type of retirement account.*

- ☐ IRA
☐ Roth IRA
☐ Keogh
(Defined Benefit Plan or Defined Contribution Plan)
☐ Other (please describe) _____

Custodian:**Beneficiary:****Date of Plan:** / / **Section D.** Private or public entity. *Please indicate the entity type and check one box below.*

- ☐ Corporation
☐ Partnership
☐ Limited Liability Company
☐ Non-Profit Organization
☐ Foundation

Section E. Custodianships.

- ☐ UCTA
☐ UGMA
☐ UTMA

Custodian:**State:****Minor:****Age:****Section F.** Under Trust agreements. *Please indicate the name of the trustee(s), the name of the Trust and the date of the Trust agreement in the space provide below)***Name of trustee(s):****Name of Trust:****Date of Trust Agreement:** / / **Section G.** Estate. *Please indicate the fiduciary capacity and the name of the person or entity authorized to hold such capacity as follows. (e.g. Include the name of the deceased and the executor)*

- ☐ Executor (EX)
☐ Personal Representative (Per Rep)
☐ Administrator (Adm)
☐ Conservator (Cons)
☐ Other. Please explain _____

Fiduciary Name(s):**Estate of:****Date of Agreement:** / /



PART II - SCHEDULE OF TRANSACTIONS IN ARENA COMMON STOCK

- A. BEGINNING HOLDINGS:** State the total number of shares of Arena common stock owned at the opening of trading on March 17, 2008, long or short (*must be documented*). If none, write "zero" or "0".

Shares					

- B. PURCHASES/ACQUISITIONS:** Separately list each and every purchase of Arena common stock during the period from March 17, 2008 and April 27, 2011, inclusive, and provide the following information (*must be documented*):¹

Trade Date (List Chronologically) (Month/Day /Year)	Number of Shares Purchased/Acquired	Purchase/Acquisition Price Per Share	Total Cost (excluding taxes, commissions and fees)
/ /		.	.
/ /		.	.
/ /		.	.
/ /		.	.

- C. SALES:** For shares purchased separately list each and every sale of Arena common stock during the period March 17, 2008 and April 27, 2011, inclusive, and provide the following information (*must be documented*):

Trade Date (List Chronologically) (Month/Day /Year)	Number of Shares Sold	Sale Price Per Share	Amount Received (excluding taxes, commissions and fees)
/ /		.	.
/ /		.	.
/ /		.	.
/ /		.	.

- D. ENDING HOLDINGS:** State the total number of shares of Arena common stock owned at the close of trading on April 27, 2011, long or short (*must be documented*).

Shares					

IF YOU NEED ADDITIONAL SPACE TO LIST YOUR TRANSACTIONS YOU MUST
PHOTOCOPY THIS PAGE, PRINT YOUR NAME AND SOCIAL SECURITY OR TAXPAYER
IDENTIFICATION NUMBER AT THE TOP OF EACH SHEET AND CHECK THIS BOX:

☐

IF YOU DO NOT CHECK THIS BOX THESE ADDITIONAL PAGES WILL NOT BE REVIEWED.

¹**Please note:** Information requested with respect to your purchases/acquisitions of Arena common stock from after the close of trading on January 27, 2011 through and including the close of trading on April 27, 2011 is needed in order to balance your claim; purchases/acquisitions during this period, however, are not eligible under the Settlement and will not be used for purposes of calculating your Recognized Loss pursuant to the Plan of Allocation.



PART III - SUBSTITUTE FORM W-9

Request for Taxpayer Identification Number (Required for Receipt of Stock):

Enter taxpayer identification number below for the Beneficial Owner(s). For most individuals, this is your Social Security Number. The Internal Revenue Service ("I.R.S.") requires such taxpayer identification number. If you fail to provide this information, your claim may be rejected.

Social Security Number (for individuals) OR Taxpayer Identification Number (for estates, trusts, corporations, etc.)

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PART IV - CERTIFICATION AND RELEASE

Definitions

All capitalized terms used but not defined herein shall have the same meanings as in the Notice and the Stipulation and Agreement of Settlement dated November 3, 2017 ("the Stipulation"), which is posted on the Claims Administrator's website at www.ArenaPharmaceuticalsClassActionSettlement.com. In addition, the following terms shall have the following meanings:

1. "Defendants" means Arena Pharmaceuticals, Inc., Jack Lief, Robert E. Hoffman, Dominic P. Behan, William R. Shanahan, Jr., and Christen Anderson.
2. "Released Persons" means each and all of the Defendants and each and all of their Related Persons.
3. "Related Persons" means each of the Released Persons' and their legal affiliates' past or present directors, officers, employees, partners, insurers, co-insurers, reinsurers, principals, controlling shareholders, attorneys, accountants, auditors, investment advisors, personal or legal representatives, predecessors, successors, parents, subsidiaries, divisions, joint ventures, assigns, spouses, heirs, estates, related or affiliated entities, any entity in which a Released Person has a controlling interest, any members of an Individual Defendant's immediate family, any trust of which an Individual Defendant is the settlor or which is for the benefit of an Individual Defendant and/or any member of an Individual Defendant's immediate family, and any entity in which a Defendant and/or any member of an Individual Defendant's immediate family has or have a controlling interest (directly or indirectly).
4. "Released Claims" means any and all claims, demands, rights, causes of action or liabilities of every nature and description whatsoever (including, but not limited to, any claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses or liabilities whatsoever), whether based on federal, state, local, foreign, statutory or common law or any other law, rule, ordinance, administrative provision or regulation, including Unknown Claims as defined in ¶1.30 of the Stipulation, whether class or individual in nature, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, concealed or hidden, suspected or unsuspected, which now exist or heretofore have existed, that were asserted or could have been asserted by Lead Plaintiff or any Settlement Class Member against the Released Persons based on, arising from or relating to both: (i) the purchase, acquisition, holding, disposition, or sale of Arena common stock during the Class Period; and (ii) the allegations, transactions, facts, matters, events, disclosures, registration statements, public filings, acts, occurrences, representations, statements, omissions or failures to act that occurred during the Class Period and that were or could have been alleged by Lead Plaintiff in the Action against the Released Persons based upon the facts alleged in the Complaint. Released Claims does not include claims to enforce the Settlement.
5. "Unknown Claims" means collectively any Released Claims which Lead Plaintiff or any Settlement Class Member do not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have affected his, her or its decision not to object to this Settlement or seek exclusion from the Settlement Class. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Lead Plaintiff shall expressly waive and each of the Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived the provisions, rights, and benefits of California Civil Code §1542, which provides:



PART IV- CERTIFICATION AND RELEASE CONTINUED

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Lead Plaintiff shall expressly waive and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States or any foreign country, or any principle of common law, which is similar, comparable or equivalent in substance to California Civil Code §1542. Lead Plaintiff and Settlement Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, each Settlement Class Member, and Lead Plaintiff expressly, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. Lead Plaintiff acknowledges, and the Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a material element of the Settlement of which this release is a part.

Submission to Jurisdiction of Court and Acknowledgements and Affirmations

I (we) submit this Proof of Claim and Release Form under the terms of the Stipulation of Settlement described in the Notice. I (we) also submit to the jurisdiction of the United States District Court for the Southern District of California with respect to my claim as a Settlement Class Member and for purposes of enforcing the release set forth herein. I (we) further acknowledge that I am (we are) bound and subject to the terms of any judgment that may be entered in the Action. I (we) affirm that I (we) purchased Arena common stock between March 17, 2008 and January 27, 2011, inclusive, and claim to have suffered losses as a result of such purchase. By submitting this Proof of Claim and Release Form, I (we) state that I (we) believe in good faith that I am a (we are) Settlement Class Member(s) as defined in the Notice or am (are) acting for such person; that I am (we are) not a Defendant in the Action or anyone excluded from the Settlement Class; that I (we) have read and understand the Notice; that I (we) believe that I am (we are) entitled to receive a share of the Net Settlement Fund; that I (we) elect to participate in the proposed Settlement described in the Notice; that I (we) have not filed a request for exclusion; and that I (we) have not submitted any other claim covering the same purchases of Arena common stock between March 17, 2008 and January 27, 2011, inclusive, and know of no other person having done so on my (our) behalf. I (We) have set forth where requested herein all relevant information with respect to each purchase or acquisition of Arena common stock between March 17, 2008 and January 27, 2011, inclusive. I (we) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (we) understand that no discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Proof of Claim and in particular that no discovery shall be permitted against any Defendants in connection with any Proof of Claim.

**PART IV- CERTIFICATION AND RELEASE CONTINUED**Release

I (We) hereby acknowledge, on behalf of myself (ourselves) and my (our) heirs, agents, executors, administrators, predecessors, successors, and assigns (or, if submitting this Proof of Claim and Release Form on behalf of a corporation, a partnership, estate or one or more other persons, on behalf of it, him, her or them and on behalf of its, his, her or their heirs, agents, executors, administrators, predecessors, successors, and assigns), full and complete satisfaction of, and do hereby fully, finally and forever settle, release and discharge from the Released Claims each and all of the Released Parties, and I (we) shall forever be enjoined from prosecuting any or all Released Claims against any Released Parties.

This release shall be of no force or effect unless and until the Court approves the Stipulation and the Stipulation becomes effective on the Effective Date (as defined in the Stipulation).

I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign, transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

I (We) hereby warrant and represent that I (we) have included information about all of my (our) transactions in Arena common stock that occurred during the Class Period, as well as the number of shares of Arena held by me (us) at the beginning of trading on March 17, 2008 and at the close of trading on January 27, 2011.

I (We) certify that I am (we are) not subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code.

Note: If you have been notified by the Internal Revenue Service that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

I (We) declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied by the undersigned is true and correct.

Signature

Date

Print Name

Email Address

Day Telephone

Evening Telephone

On Behalf of:

(Print name of corporation, partnership, estate, or other entity if you are submitting this form on behalf of one of them.)

Signature

Date

Print Name

Email Address

Day Telephone

Evening Telephone

On Behalf of:

(Print name of corporation, partnership, estate, or other entity if you are submitting this form on behalf of one of them.)

EXHIBIT A-3

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TODD SCHUENEMAN, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

ARENA PHARMACEUTICALS, INC.,
JACK LIEF, ROBERT E. HOFFMAN,
DOMINIC P. BEHAN, WILLIAM R.
SHANAHAN, and CHRISTY
ANDERSON,

Defendants.

Case No. 3:10-cv-01959-CAB (BLM)

CONSOLIDATED CLASS ACTION

SUMMARY NOTICE

TO: ALL PERSONS WHO PURCHASED THE COMMON STOCK OF ARENA
PHARMACEUTICALS, INC. ("ARENA" OR THE "COMPANY") FROM
MARCH 17, 2008 THROUGH JANUARY 27, 2011, INCLUSIVE, AND
WERE DAMAGED THEREBY,

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States
District Court for the Southern District of California, that a hearing will be held on
_____, 2018, at _____.m., before the Honorable Cathy Ann Bencivengo,
United States District Judge, at the United States District Court for the Southern
District of California, Courtroom 4C, 221 West Broadway, San Diego, CA 92101,
for the purpose of determining: (1) whether the proposed settlement of the claims in

Case No. 3:10-cv-01959-CAB (BLM)

SUMMARY NOTICE

1 the Action for \$24,000,000 (\$12,025,000.00 in cash, plus interest, and \$11,975,000
2 in Arena common stock (“Settlement Shares”) (Arena has the option to pay all or
3 part of the Settlement Shares in cash at the time Arena is to issue the Settlement
4 Shares)), should be approved by the Court as fair, just, reasonable, and adequate;
5 (2) whether a Final Judgment and Order of Dismissal with Prejudice should be
6 entered by the Court dismissing the Action with prejudice; (3) whether the Plan of
7 Allocation is fair, reasonable, and adequate and should be approved; and (4) whether
8 the application of Lead Counsel for the payment of attorneys’ fees and expenses,
9 and Lead Plaintiff’s award in connection with the Action should be approved.

10 IF YOU PURCHASED ARENA COMMON STOCK BETWEEN
11 MARCH 17, 2008 AND JANUARY 27, 2011, INCLUSIVE, YOUR RIGHTS
12 MAY BE AFFECTED BY THE SETTLEMENT OF THIS LITIGATION. If you
13 have not received a detailed Notice of Pendency and Proposed Settlement of Class
14 Action (“Notice”) and a copy of the Proof of Claim and Release form, you may
15 obtain copies by writing to Schueneman v. Arena Pharmaceuticals, Inc., c/o GCG,
16 P.O. Box 10526, Dublin, OH 43017-0526, or at
17 www.ArenaPharmaceuticalsClassActionSettlement.com. If you are a Settlement
18 Class Member, in order to share in the distribution of the Net Settlement Fund, you
19 must submit a Proof of Claim and Release by mail (*postmarked no later*
20 *than*_____, 2018) or submitted electronically *no later than*_____, 2018,
21 establishing that you are entitled to recovery.

22 If you are a Settlement Class Member and you desire to be excluded from the
23 Class, you must submit a request for exclusion such that it is *postmarked no later*
24 *than* _____, 2018, in the manner and form explained in the detailed Notice,
25 referred to above. All Settlement Class Members who do not timely and validly
26 request exclusion from the Settlement Class in response to the Notice will be bound
27 by any judgment entered in the Action pursuant to the Stipulation.

1 If you are a Settlement Class Member, you have the right to object to the
2 Settlement, the Plan of Allocation, or the fee and expense applications, or otherwise
3 request to be heard. To object, you may submit a written objection in accordance
4 with the procedures described in the more detailed Notice, referred to above, and/or
5 you may appear at the hearing described above. Any written objection must be
6 delivered to the Clerk of the Court, United States District Court, Southern District
7 of California, 333 West Broadway, Suite 420, San Diego, CA 92101, such that it is
8 *postmarked no later than* _____, 2018. Note that the Court can only approve
9 or deny the settlement, not change the terms of the settlement.

10 **PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S**
11 **OFFICE REGARDING THIS NOTICE.** If you have any questions about the
12 Settlement, you may contact Lead Counsel at the address listed below:

13 Jeffrey P. Campisi
14 KAPLAN FOX & KILSHEIMER LLP
15 850 Third Avenue; 14th Floor
16 New York, NY 10022
17 (212) 687-1980
(800) 290-1952
jcampisi@kaplanfox.com
www.kaplanfox.com

18 Laurence D. King
19 KAPLAN FOX & KILSHEIMER LLP
20 350 Sansome Street, Suite 400
21 San Francisco, CA 94104
(415) 772-4700
lking@kaplanfox.com
www.kaplanfox.com

22 DATED: _____, 2017

23 BY ORDER OF THE COURT
24 UNITED STATES DISTRICT COURT
25 SOUTHER DISTRICT OF CALIFORNIA